

2. Title

Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage.

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule:

R307-328 establishes Reasonably Available Control Technology (RACT) for control of gasoline vapors during the filling of gasoline transport vehicles and storage tanks in any ozone nonattainment or maintenance areas and Utah and Weber Counties. The rule is based on federal control technique guidance documents. This requirement is commonly referred to as stage I vapor recovery. The rule is required under the state implementation plan for ozone that is incorporated by reference under R307-110-13. The plan is required by the Clean Air Act, 42 U.S.C. 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source. . ." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety. . ."

4. A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule:

R307-328 was amended effective once since its last five-year review(effective 01/16/2007, DAR No. 29005); two comments were received. COMMENT # 1 (EPA): R307-327-7(3), R307-328-8(3), R307-335-7(3), R307-340-16(3), R307-342-7(3): Same comment for all; the first sentence should be changed to read "... or approved by the Executive Secretary after obtaining concurrence from EPA." STAFF RESPONSE. In all these rules the process that must be followed, before a source could use alternate monitoring methodology, is described in an earlier paragraph. It is not necessary to repeat the reference to EPA concurrence again. The current language was approved by EPA and has been effective. COMMENT #2 (EPA): Comment on rules regarding potential alternative requirements or deadlines: There are various instances in which the RACT rules allow sources to implement alternative requirements or to meet different deadlines with the executive secretary's or Board's approval. See, for example, R307-326-4(3), -6(3), -7, -9(1), -9(5)(a), 10(2); R307-327-4(1), -6(1)(a) and (c), -6(3)(d), -7(2); R307-328-4(6) and (9), -6(4), -8(2); and similar provisions in the other RACT rules. We recognize that this language appears in the existing EPA-approved SIP. However, as you know, we have expressed concern to State management and staff regarding these types of provisions within the Utah SIP and our belief that these provisions should be modified or removed. Because the Board will already be considering changes to these rules, we think it would be an appropriate time for the Board to rectify these problems in these rules. One possible approach would be to add language providing an approval or concurrence role for EPA. This would be consistent with some of the language regarding "alternate methods of control" that is already part of the EPA-approved SIP. For example, see the language in R307-326-10(1). If these rules are submitted to us without the requisite changes, we may be unable to act on them or approve them. STAFF RESPONSE. As explained in the comment, these requirements are part of the approved SIP. The ozone RACT rules have been in place, and have effectively reduced VOC emissions since the early 1980's. The provisions to allow sources to implement alternate requirements or to meet different deadlines are important to allow flexibility. These provisions have not been misused during the last 25 years. An extra layer of review would provide no additional air quality benefit. No other comments were received about this rule since the last review.

5. A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any:

The rule is required under the state implementation plan for ozone, incorporated by reference under R307-110-13. The plan is required under the Clean Air Act, 42 U.S.C. 7410; without the state plan, EPA would be required to impose a Federal Implementation Plan.

6. **key words:** air pollution, gasoline transport, ozone

7. **attach document.**

Agency head or designee, and title

Date

m. Cheryl H. 2-23-07